

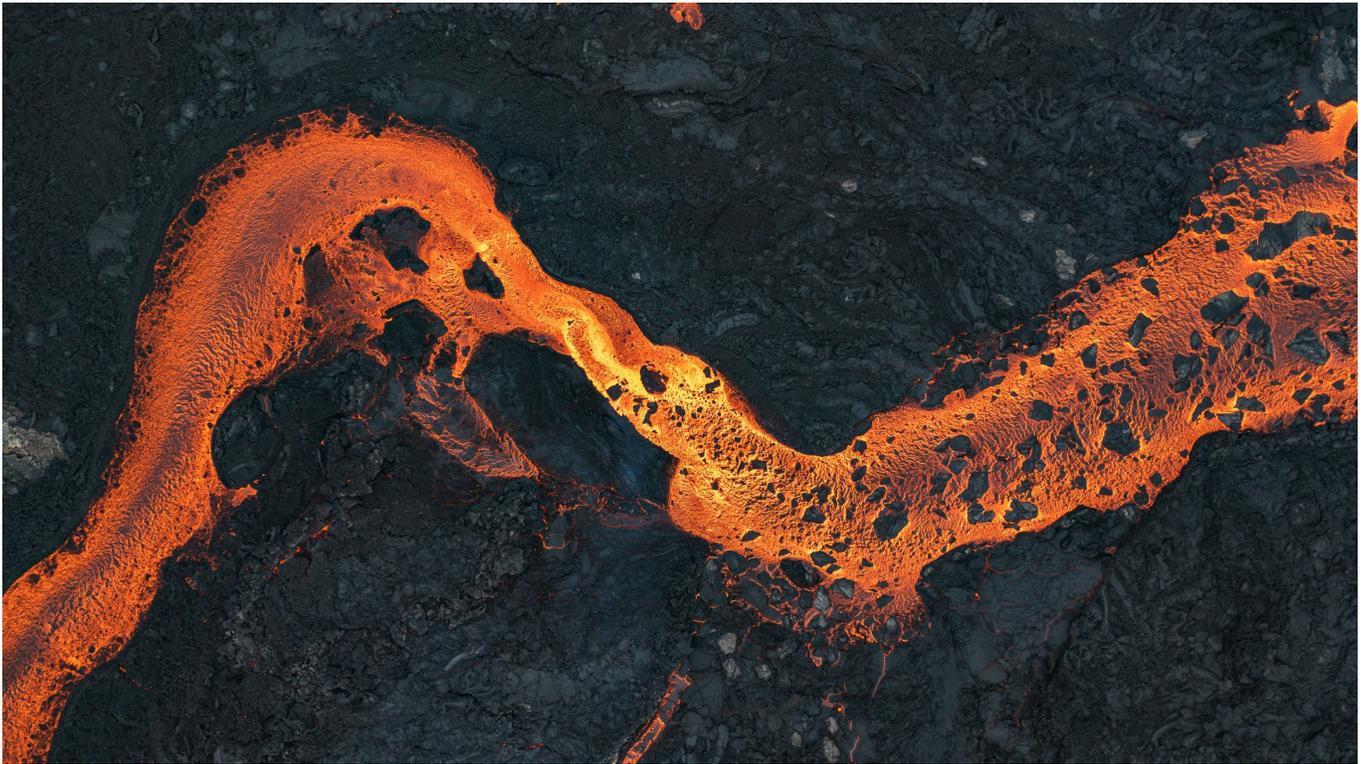
# Commissions Count as Wages: New Jersey Supreme Court Ruling Sends Wake-Up Call to Employers

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## Summary

- The New Jersey Supreme Court's recent decision in *Musker v. Suuchi, Inc.* highlights how many jurisdictions confer wage and hour protections to supplementary forms of compensation.
- The dispute was based upon the plaintiff's allegations that she was not properly paid commissions she earned through selling PPE as part of her job duties.
- The New Jersey Supreme Court held that commissions paid directly to an employee for performing a service are "wages" under the NJWPL and remanded the case to the trial court for further proceedings.
- The case serves as a wake-up call to all employers to review the law in each applicable jurisdiction to assess what types of compensation are protected by wage and hour laws, especially because violating wage and hour laws can trigger significant liability.



Abstract Aerial Art/Digital Vision via Getty Images

It is well known that wage and hour violations are among the most expensive mistakes employers can make, often triggering costly lawsuits and hefty penalties. Therefore, employers must understand what qualifies as a “wage” under applicable federal and state law to avoid potential legal exposure. An employee’s salary and hourly compensation are widely accepted to be “wages” under federal and state law. Many employers, however, do not realize that additional forms of compensation, such as commissions and certain types of bonuses, can legally qualify as “wages”—bringing them under the protection of wage and hour laws.

A recent New Jersey Supreme Court decision highlights how many jurisdictions confer wage and hour protections to these supplementary forms of compensation. Namely, on March 17, 2025, the New Jersey Supreme Court unanimously held in *Musker v. Suuchi, Inc.* that “commissions” paid to employees for their labor or services “always constitute[] a wage” under the New Jersey Wage Payment Law (“NJWPL”). 260 N.J. 178, 181 (2025).

## Case Background

As a sales employee of Suuchi, Inc. (Suuchi), the plaintiff initially sold software subscription packages to apparel manufacturers. The plaintiff earned a base salary of \$80,000 and was also eligible to receive commissions under Suuchi’s Sales Commission Plan.

In response to the COVID-19 pandemic, Suuchi expanded its business and began selling personal protective equipment (PPE). Accordingly, the plaintiff also began selling PPE to customers as part of her job duties. While Suuchi's Sales Commission Plan was not formally updated to reflect this new line of business, Suuchi notified employees, including the plaintiff, that they were eligible to receive commissions for PPE sales.

A dispute arose regarding the amount of commissions owed to the plaintiff. The plaintiff generated approximately \$34,448,900 in gross revenue through selling PPE. She alleged that she was entitled to 4% of those gross sales (\$1,377,956), while Suuchi argued that the plaintiff's commissions were based upon 4% of net revenue (approximately \$476,250).

The plaintiff sued Suuchi, claiming that Suuchi's failure to pay her the full amount of commissions owed was an unlawful withholding of her wages under the NJWPL. In response to cross-motions for summary judgment filed by the parties, the trial court dismissed the plaintiff's NJWPL claims, ruling that the PPE commissions were not "wages" under the NJWPL but rather "supplementary incentives," which are expressly excluded from the definition of "wages" under the NJWPL. The Appellate Division subsequently affirmed this decision, and the New Jersey Supreme Court granted leave to appeal.

## Summary of the New Jersey Supreme Court's Decision

As an initial matter, the New Jersey Supreme Court analyzed the definition of "wages" under the NJWPL, which are defined as:

[T]he direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis, excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto."

*Musker*, 260 N.J. 178 at 186 (quoting *N.J.S.A.* 34:11-4.1(c)).

The Court found that a "wage" must involve direct monetary compensation for labor or services performed by an employee. Therefore, a commission paid directly to an employee for performing a service meets the definition of "wages" under the NJWPL. On the other hand, the Court held that "supplementary incentives" are forms of compensation meant to incentivize an employee to do something beyond their job duties. Indeed, the Court identified various examples of "supplementary incentives," such as payments associated with an employee achieving perfect attendance, participating in an

office contest, agreeing to share an office with another employee, or choosing to work out of a particular office location.

Accordingly, the New Jersey Supreme Court reasoned that the commissions at issue were tied to the plaintiff's job duties of selling PPE. Therefore, the commissions were direct monetary compensation for the plaintiff's labor or services and constituted "wages" under the NJWPL. The Court remanded the case to the trial court for further proceedings.

## Takeaway for Employers

The case makes it abundantly clear to New Jersey employers that commissions are protected as "wages" under the NJWPL, which provides for significant civil and criminal statutory damages and penalties. New Jersey employers should be cautious regarding their commission practices as the NJWPL contains many technical requirements regarding the time, manner, and mode of payment, as well as various prohibitions on withholdings/deductions from wages. In light of the above, New Jersey employers must ensure their commission plans and practices comply with all of these legal requirements.

Additionally, this case should serve as a wake-up call to all employers across the country regarding the need to review the law in each jurisdiction in which they have employees to assess what types of compensation are protected by wage and hour laws. Employers should also review their plans and practices for non-salary compensation, such as commissions, bonuses, and profit-sharing arrangements, to avoid inadvertently violating federal and/or state wage and hour laws. As noted above, wage and hour violations can trigger significant amounts of liability (including, but not limited to, liquidated damages and the award of attorneys' fees to the aggrieved employee), with the potential for costly collective and class action lawsuits.

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